MOK LEK

v.

TIMBALAN MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ORS.

HIGH COURT MALAYA, SEREMBAN
T SELVENTHIRANATHAN JC
[ORIGINATING SUMMONS NO. 443 OF 1990]
14 MARCH 1992

PREVENTIVE DETENTION: *Restriction Order - Restricted Residence - Warrant of arrest and detention order against plaintiff under s. 2(1) of Restricted Residence Act 1933 - Order in Form A dated 6 April 1990 - Plaintiff arrested on 11 April 1990 - Whether five-day delay in execution of the order made the detention illegal - Detained overnight at Seremban Police Headquarters and only conveyed to Pudu Prison on 12 April 1990 - Whether delay in conveying plaintiff to Pudu Prison contrary to order which stated plaintiff was to be detained only in Pudu Prison - Delay of one hour and fifteen minutes before being informed of the grounds of arrest - Whether contrary to Article 5(3) of the Constitution - No opportunity to appeal against detention - Whether an inquiry under s. 2(i) was a mandatory requirement - Allegation of mala fide - Whether sustainable.*

In pursuant to an order (1st order) issued by the first defendant in Form A dated 6 April 1990 under s. 2(i) of the Restricted Residence Act 1933 ("the Act"), the plaintiff was arrested on 11 April 1990 at 9.00 a.m. in Mantin, Negeri Sembilan and subsequently detained overnight at the Seremban Police Headquarters before being conveyed to the Pudu Prison on 12 April 1990.

On 24 April 1990, the first defendant issued a second order in Form C under s. 2(ii) of the Act, requiring the plaintiff to reside for five years in Bagan Serai, Perak, and placing him under police supervision.

The plaintiff sought the following declarations:

(i) that the arrest and detention order dated 6 April 1990 under s. 2(i) of the Act and the restriction order dated 24 April 1990 under 2(ii) of the Act were illegal and contrary to law;

(ii) that the arrest on 11 April 1990 and consequent detention until 12 April 1990 at the police headquarters was illegal;

(iii) that the plaintiffs restriction to Bagan Serai for five years was not valid and of no effect and therefore cancelled.

The plaintiff's Counsel contended:

(a) That a five-day delay between the first order dated 6 April 1990 and the arrest on 11 April 1990 made the detention unlawful in the absence of reasons for the delay;

(b) that the grounds of arrest were not communicated immediately to the plaintiff, contrary to Article 5(3) of the Constitution;

(c) that his overnight detention at the police headquarters was contrary to the first order which required the plaintiff to be detained only at the Pudu Prison and this vitiated the entire proceedings;

(d) that the plaintiff was denied the right to appeal against the detention;

(e) that the defendants had acted *mala fide* in their exercise of powers.

Held:

[1] The five days taken from the issuing of the first order and its being received and acted upon the plaintiff was reasonable time taken to act with all convenient speed in the circumstances. No time-frame is prescribed under s. 2(i) of the Act within which the order had to be executed. It was sufficient compliance with the direction of the first defendant if the order was executed with all convenient speed as provided by s. 54(2) of Interpretation Acts 1948 and 1967. Further, as long as the order remained unexecuted, the person named in that order was at liberty and was in no way prejudiced by any delay in executing it. He cannot therefore claim that the order became null and void or lapsed through such delay.

[2] The plaintiff had acknowledged on the reverse sides of the order under s. 2(i) and the grounds of arrest that both documents were served on him and their contents were read and interpreted to him in Mandarin by the arresting officer at 10.15 a.m. on 11 April 1990. The delay of one and a quarter hours between the arrest of the plaintiff at 9.00 a.m. on 11 April 1990 and the communicating of the grounds of arrest thereof at 10.15 a.m. did not violate the requirement of Article 5(3) of the Federal Constitution that the plaintiff be informed of the grounds "as soon as may be" after his arrest and, in the circumstances, reasonable.

[3] Section 2(i) of the Act and Form A does not prescribe any time limit within which an arrested person should be conveyed to the specified prison. Form A only directs the police officer concerned to arrest the wanted person and convey him to the prison. It envisages a time-lapse between the arrest and his ultimate arrival at the specified prison, bearing in mind geographical realities and distances of which the Court takes judicial notice.

[4] As such the conveying of the plaintiff on 11 April 1990 to Pudu Prison in accordance with the order under s. 2(i) of the Act was done with all convenient speed taking into consideration the procedural requirements that had to be complied with as required by law and taking judicial notice of the fact that Kuala Lumpur was 75 k.m. away from Seremban.

[5] The Restricted Residence Act 1933 itself provided that the arrested person had to be detained in police custody for the purpose of being conveyed to the specified prison. Therefore, it cannot be said that under no circumstances can an arrested person be detained anywhere else than the specified prison pursuant to an order under s. 2(i) of the Act.

[6] As the plaintiff had admitted the charge and did not ask for an inquiry, the plaintiff was precluded from complaining that an inquiry was not held. Further, it was not mandatory to hold an inquiry under s. 2(i) of the Act.

[7] There was no evidence to prove that the relevant authorities had acted *mala fide*. On the contrary, the order of the first defendant under s. 2(i) of the Act and the grounds of arrest showed that the first defendant, had acted in the exercise of his powers under s. 2(i) of the Act and that the arrest of the plaintiff and his detention at police headquarters in Seremban were made pursuant to the exercise of a valid legal power.

[Plaintiff's application dismissed with costs to be taxed on a party and party basis.]

Cases referred to:

Christie and Anor. v. Leachinsky [1947] AC 573 ***(refd)***

Aminah v. Superintendent of Prison, Pengkalan Chepa, Kelantan [1968] 1 MLJ 92 ***(refd)***

PP v. Koh Yoke Koon [1988] 1 CLJ (Rep) 269 ***(refd)***

Phua Hing Lai v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors. and other appeals [1990] 1 CLJ (Rep) 238 ***(refd)***
Ooi Ah Phua v. Officer-In-Charge of Criminal Investigation, Kedah/Perlis [1975] 2 MLJ 198 ***(refd)***
Inspector-General of Police & Anor. v. Lee Kim Hong [1979] 2 MLJ 291 ***(refd)***
Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors. v. Cheow Siong Chin [1988] 1 MLJ 432 ***(refd)***
Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors. v. Liau Nyun Fui [1991] 1 CLJ (Rep) 458 ***(refd)***
Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors. v. Karpal Singh s/o Ram Singh [1992] 1 CLJ (Rep) 212 ***(foll)***

Legislation referred to:
Federal Constitution, art. 5(1), (3)
Emergency (Public Order and Prevention of Crime) Ordinance 1969, ss. 4(2), 12(1), (2)
Evidence Act 1950, ss. 56, 91, 92
Interpretation Acts 1948 & 1967, ss. 40(2)(c), 54(2)
Restricted Residence Act 1933, ss. 2(i), (ii), 2A(i), 3(i), (ii)

For the plaintiff - Christopher Fernando; M/s. Gunaretnam & Co.
For the defendants - Suriyadi bin Halim Omar, SFC; AG's Chambers

JUDGMENT

T Selventhiranathan JC:

On 6 April 1990 the first defendant, the Timbalan Menteri Dalam Negeri, issued a warrant of arrest and detention order against the plaintiff under s. 2(i) of the Restricted Residence Act 1933 ("the Act"). The order was accompanied by the grounds of arrest pursuant to Article 5(3) of the Constitution.

For purposes of convenience and brevity, unless otherwise specified or apparent from the context, references to orders, sections and Forms in this judgment are references to the appropriate orders under, and sections and Forms in, the Act.

The order of the first defendant in Form A was directed to the chief police officer of Negeri Sembilan and all other police officers and to the officer in charge of the Pudu Prison, Kuala Lumpur. It directed the said police officer to arrest the plaintiff wherever he may be found and convey him to the Pudu Prison. It further directed the officer in charge of the Pudu Prison to detain the plaintiff until he received further orders through the first defendant.

The following facts emerge from a reading of the affidavits filed on behalf of the parties. However, a recitation of the facts alleged on behalf of the plaintiff also appears separately later in this judgment to indicate the points of disagreement or divergence between the parties.

Acting Assistant Superintendent of Police Wong We Ping, the Investigating Officer of the case against the plaintiff under the Act, who was attached to the commercial crime branch of the contingent police headquarters Seremban, received the order in Form A dated 6 April 1990 through police channels on the 9th for execution, together with the grounds of arrest. At 9.00 a.m. on the 11th he arrested the plaintiff in Mantin, Negeri Sembilan. The plaintiff was served with the order and the grounds of his arrest by A.S.P. Wong at about 10.15 a.m. the same day, and the contents of both documents were read and interpreted to him in Mandarin and acknowledged by him as being understood. He was detained at the contingent police headquarters Seremban that day and on the following day the 12th he was conveyed to the Pudu Prison and detained in accordance with the order.

On 24 April 1990 the first defendant made an order in Form C under s. 2(ii) requiring the plaintiff to reside for a period of five years in Bandaran Bagan Serai, Perak, and placing him under police supervision during that period pursuant to an order in Form E made under s. 2A(i). The orders of restricted residence and police supervision were served on and explained to him and acknowledged by him as being understood, after which he was conveyed under police escort to Bandaran Bagan Serai and placed under restricted residence the same day.

The plaintiff then commenced these proceedings against the defendants seeking declarations to the following effect, namely:

(a) that the order under s. 2(i) dated 6 April 1990 which resulted in the re-arrest and consequent re-detention of the plaintiff was not valid/was illegal and contrary to law;

(b) that the restriction order under s. 2(ii) dated 24 April 1990 is also not valid/is illegal and contrary to law;

(c) that the arrest by the police and detention in police custody of the plaintiff for a total period of twenty-three days from 24 December 1989 without being authorised/wholly without authorisation was not in accordance with law as it was contrary to Article 5(1) of the Constitution;

(d) the re-arrest of the plaintiff on 11 April 1990 and his consequent detention until 12 at the contingent police headquarters Seremban was contrary to the order of the Minister (the first defendant) under s. 2(i) and by reason thereof was again not valid, without being authorised/wholly without authorisation and not in accordance with law;

(e) the consequent detention of the plaintiff at the Pudu Prison until 24 April 1990 was also not valid, without being authorised/wholly without authorisation and not in accordance with law;

(f) that the plaintiffs restriction to Bagan Serai is cancelled, not valid and of no effect.

In support of his application, the plaintiff alleged in an affidavit affirmed by Tee Ah Tung, his wife, and adopted by him, that he was arrested on 24 December 1989 by Corporal Bakar of the contingent police headquarters Seremban and detained at the Rahang Police Station for seven days without being given the grounds of his arrest. Upon the expiry of the seven days he was taken to and detained at the contingent police headquarters for a further seven days without again being given the grounds therefor despite repeated enquiries. After that, he was brought to the Cheras Police Station and again detained for a further period of nine days after which he was released.

The plaintiff's wife also averred that he was re-arrested on 11 April 1990 but he was not given the grounds of his arrest immediately. He was instead brought to and detained at the contingent police headquarters Seremban until the following day, the 12th. There he was forced to sign a number of forms, the contents of which were not explained to him and which he did not understand but which he and his wife subsequently came to know was the warrant of arrest and detention. On the evening of the 12th the plaintiff was brought to and detained at the Pudu Prison until the 24th when he was again asked to sign a number of forms, the contents of which were not explained to him and which he did not understand. He was only informed that he was restricted to Bandaran Bagan Serai. He and his wife subsequently came to know that these forms were the restriction order. Throughout his detention in police custody the plaintiff and his wife were told not to obtain legal advice as this would make matters worse for them.

The plaintiffs wife further stated that although the warrant of arrest was dated 6 April 1990, the arrest of the plaintiff was not effected until the 11th. She believed that the deprivation of the liberty of the plaintiff was not obtained in a manner wholly in order and proper and in accordance with law and the constitutional rights of the plaintiff. According to her, the allegations made against the plaintiff were patently false, vague, frivolous and did not contain dates, places and on the whole were devoid of any facts and easily concoctable.

In his affidavit in reply, the first defendant averred that he issued the order in respect of the plaintiff in accordance with s. 2(i), together with the grounds of arrest. He did so after scrutinising and considering written information and documents (submitted to him) and on being satisfied of the charge against the plaintiff so as to require him to reside within the Bandaran Bagan Serai area and after being satisfied that it was not necessary to hold an enquiry under s. 2(i).

He deponed that on 24 April 1990, he issued an order under s. 2(ii) against the plaintiff after scrutinising and considering written information and connected documents (submitted to him) and being satisfied that it was not necessary to hold an enquiry under that section, and after being satisfied from such information and documents that there were reasonable grounds for believing that the plaintiff should be required to reside in the Bandaran Bagan Serai area. The first defendant also by order issued under s. 2A(i) directed that the plaintiff be placed under police supervision for a period of five years. He deponed further that he honestly believed that the provisions of the Act had been fully complied with in relation to the plaintiff and refuted all claims and charges made in respect of the plaintiffs arrest and detention under the Act.

Learned Counsel for the plaintiff, Mr. Christopher Fernando, attacked the order under s. 2(i) and action taken in relation to its execution on the following grounds:

(a) the order was issued on 6 April 1990 but the plaintiff was not arrested until the 11th at his house in Mantin and the five-day delay in executing the order impugned the action taken in the absence of reasons for the delay;

(b) the plaintiff was not informed immediately of the grounds of his arrest, and this was in violation of Article 5(3) of the Constitution, on the basis of *Christie & Anor. v. Leachinsky* [1947] AC 573 and *Aminah v. Superintendent of Prison, Pengkalan Chepa, Kelantan* [1968] 1 MLJ 92;

(c) by the order the plaintiff was to be arrested wherever he may be found and detained specifically at the Pudu Prison, without any option for detention elsewhere for whatever period. Therefore his detention overnight at the contingent police headquarters Seremban was a clear violation of the order for which no reasons whatsoever were assigned and this vitiated the entire proceedings. He cited in support *PP v. Koh Yoke Koon* [1988] 1 CLJ (Rep) 269 and *Ooi Cheng Aun v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors.* Muar High Court OS No. 24-92-90 (unreported). He sought to distinguish *Phua Hing Lai v. Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia Ors. and other appeals* [1990] 1 CLJ (Rep) 238 on the ground that the initial detention in that case was lawful whereas it was not so in the plaintiffs case;

(d) by the grounds of arrest the plaintiff was allowed fourteen days within which to make any appeal but he was instead escorted and placed under restriction before the expiry of the fourteen days and this deprived him of the opportunity of appeal that was accorded him. This also showed the lack of *bona fides* on the part of the authorities concerned, be it through negligence or concoction of evidence.

Learned Senior Federal Counsel for the defendants, Mr. Suriyadi bin Halim Omar, contended that the impugned action was taken in accordance with s. 2 which is silent as to the time-frame within which an arrested person must be sent to prison. He compared the provisions of ss. 2 and 3 and submitted that what is required under s. 2 is for the actions to be taken with all convenient speed. He cited in support *Phua Hing Lai v. Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia Ors.* (*supra*) and *Ooi Ah Phua v. Officer-In-Charge of Criminal Investigation, Kedah/Perlis* [1975] 2 MLJ 198 and s. 54(2) of the Interpretation Acts 1948 and 1967 ("Act 388"). He also referred to *Teoh Lian Fatt v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors.* Kuala Lumpur High Court OS No. 31-379-88 (unreported) and submitted that the facts in this case were very similar to those of that case. He submitted that the time-span (more appropriately time-lapse) of one hour and fifteen minutes between the arrest of the plaintiff and his being informed of the grounds of arrest was not unreasonable and did not run foul of Article 5(3) of the Constitution. He cited in support *Inspector-General of Police & Anor. v. Lee Kim Hong* [1979] 2 MLJ 291 and *Ooi Ah Phua* (*supra*).

On the failure to hold an enquiry before making the restriction order, learned Senior Federal Counsel submitted that this was optional: *Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia Ors. v. Cheow Siong Chin* [1988] 1 MLJ 432.

To deal with para. (c) of Mr. Fernando's submission first, the thrust of the attack on the order made under s. 2(i) was mounted on the ground that the overnight detention of the plaintiff at the contingent police headquarters Seremban after his arrest on the 11th, instead of at the Pudu Prison, was illegal and not in accordance with law, as stipulated in Article 5(1) of the Constitution.

In *Phua Hing Lai* (*supra*), the Supreme Court had to consider the interpretation of ss. 3(i) and 3(ii). It held *inter alia* that where no time-frame is prescribed (as in s. 3(i)) for the implementation of an order under s. 2(ii) in respect of the matters stated in s. 3(i), anything that needs to be done must be done with all convenient speed, in accordance with s. 54(2) of Act 388 which reads:

> Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises.

Further, Hashim Yeop A Sani CJ (Malaya) speaking for the Supreme Court in that case said at p. 240 of the report:

> Whoever caused the delay must explain the delay; and it is for the Court to decide if the delay is reasonable under the circumstances.

Turning to the present case, the order under s. 2(i) was in Form A. Neither s. 2(i) nor Form A prescribes any time-frame within which the plaintiff was to be conveyed to the Pudu Prison and detained there after his arrest. However, the Court cannot ignore the fact that the Act is applicable throughout Malaysia and a person may be arrested pursuant to an order under s. 2(i) in any part of the country. Form A directs the police officer concerned to **arrest** the wanted person **wherever** he may be **found and convey him to** the **prison and then it directs** the officer in charge of the **prison to detain him** (emphasis added) until further orders. If the legislature had intended that the detaining of the person in the prison must immediately follow his arrest, Form A would not have been framed as it appears. It envisages a time-lapse between the arrest of the person and his ultimate arrival at the prison to be detained, bearing in mind geographical realities and distances, of which the Court takes judicial notice. Otherwise Form A would have been cast in language simply to direct arrest by the police to be followed by detention in prison.

Since no time-frame is prescribed in s. 2(i) and Form A, the arrested person must be conveyed to the prison with all convenient speed (s. 54(2) of Act 388), bearing in mind the geographical realities and distances adverted to earlier. As Abdul Hamid Omar LP said in *Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors. v. Liau Nyun Fui* [1991] 1 CLJ (Rep) 458 at p. 463 of the report:

> Turning to the present case, it seems clear that a time frame is not prescribed under s. 2(ii) of the Enactment and the Timbalan Menteri cannot therefore be said to be imposed with an obligation to make a restriction order within a specified time. The word 'thereafter' used in subsection (ii) of the Enactment clearly connotes that the Timbalan Menteri may make a restriction order 'thereafter', that is, some time after making the order of arrest and detention, after such further enquiry he may deem necessary.
>
> Two distinct situations would therefore arise where a restriction order is issued and that is:
>
> (1) after a further enquiry (if further enquiry is deemed necessary); and
>
> (2) after no further enquiry is deemed necessary.
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> In the light of the judgment in *Phua Hing Lai's* case (*supra*) the position in law seems to be that when no time frame is prescribed then anything that shall be done under s. 2(ii) shall be done with all convenient speed. Accordingly in respect of situation (1), the further enquiry and the issue of the restriction order shall be, effected with all convenient speed. What constitutes convenient speed would depend on the circumstances of each case. And in respect of situation (2), where the Timbalan Menteri does not deem it necessary for any further enquiry he ought to proceed thereafter, that is, after the detention, to make the restriction order with all convenient speed.
>
> The correct test to be applied therefore is not on the basis of unreasonable delay but convenient speed. The learned Judicial Commissioner determined the question before him on the basis of unreasonable delay. This was not a proper approach. The question that was before him was whether the Timbalan Menteri in the particular circumstances of that case had acted with all convenient speed in making the restriction order. Strictly it was for the respondent to show that the Timbalan Menteri had not so acted and not for the Timbalan Menteri to provide an explanation acceptable to the Court.

Although that case dealt with a restriction order under s. 2(ii), the position in law as to the time within which anything shall be done pursuant to an order under s. 2(i) is the same, that is, that thing shall be done with all convenient speed.

The question that arises here is whether in the particular circumstances of this case A.S.P. Wong acted with all convenient speed to convey the plaintiff to the Pudu Prison after his arrest.

As deposed to by A.S.P. Wong, the plaintiff was arrested in Mantin at 9.00 a.m. on the 11th Mantin is some twenty-four kilometers distance from Seremban, as taken note of judicially by the Court under s. 56 of the Evidence Act 1950 (based on a road map of Malaysia published in 1985 by Shell Trading Malaysia Sdn. Bhd.). A.S.P. Wong lodged a report of the arrest at Mantin police station and then escorted the plaintiff to Seremban where he served the order under s. 2(i) upon the plaintiff together with the grounds of arrest and read and interpreted the contents of both documents to him and obtained his acknowledgement. A.S.P. Wong then prepared Exhibit "WWP4" which was a letter to the Secretary-General of the Home Ministry wherein the plaintiff admitted the charge against him but appealed to be restricted to Bentong in Pahang or Semenyih in Selangor for specified reasons instead of to Bandaran Bagan Serai in Perak.

In para. 1.10 of his affidavit, A.S.P. Wong averred that on the 12th, after the service of the documents in question (on the 11th), the plaintiff was (conveyed to and) detained at Pudu Prison. He further deponed in para. 1.16 that all action taken against the plaintiff from his arrest to his detention at the Pudu Prison and also in escorting him to his place of restriction was carried out in accordance with the provisions of the law and whatever delay, if any, was necessary and not intentional and caused by making arrangements for related matters ("... segala kelewatan jika ada, adalah perlu dan tidak disengajakan kerana menguruskan hal-hal yang berkaitan").

Bearing in mind that the actions specified above (including administrative matters) had to be carried out as required by law before the plaintiff could be conveyed to the Pudu Prison to be handed over for detention, and taking judicial notice of the fact that Seremban is some seventy-five kilometers' distance from Kuala Lumpur, the Court finds that the conveying of the plaintiff on the 12th (after his arrest on the 11th) to the Pudu Prison for detention in accordance with the order of the first defendant under s. 2(i) was done with all convenient speed. In the circumstances the detention of the plaintiff at contingent police headquarters Seremban overnight for one day after his arrest did not render such detention illegal so as to vitiate the order. *PP v. Koh Yoke Koon* (*supra*) is distinguishable from the present case because there s. 4(2) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 expressly provides that every person detained pursuant to a detention order shall be detained in such place as the minister may direct and in accordance with the instructions issued by him. The order in that case provided for the respondent's detention for two years with effect from 12 December 1986 at the Pusat Pemulihan, Akhlak Pulau Jerejak. In contravention of that order, the respondent there was detained at the Muar police station from 13 to 16 December 1986 when he was removed to Pulau Jerejak Rehabilitation Centre. He had been served with the order on the 14th. In other words, he was detained at the Muar Police Station from 14 to 16 December 1986 instead of at the Pulau Jerejak Rehabilitation Centre, in direct contravention of the minister's order.

But the order under s. 2(i) here in Form A directs the **arrest** of the plaintiff **and** his being **conveyed** to the Pudu Prison, both of which acts must of necessity take place outside the prison, and without these acts being performed the minister's order will be rendered *effete*. Therefore, the Act itself provides for the arrested person to be detained in police custody for the purpose of being conveyed to the specified prison. In the light of such language of intent, it cannot be said that under no circumstances can an arrested person be detained anywhere else than in the specified prison pursuant to an order under s. 2(i). Such a strait-jacketed interpretation would render the provision in Form A for the **conveying**, of the arrested person to the specified prison after arrest meaningless. In this regard Form A is akin to s. 12(2) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 which provides that any person in the course of removal under the provisions of the order for removal made under s. 12(1) of the Ordinance shall be deemed to be in lawful custody. Section 2(i) itself of the Act envisages two situations - one where the wanted person is at large and the other where he already is in prison. This dichotomy of situations is reflected in Forms A and B. However, whatever necessary action that has to be taken to comply with the requirements of the law after arrest and to convey the arrested person to prison must be taken with all convenient speed. There can be no gain saying that.

The Court also finds the contention on behalf of the plaintiff that the warrant of arrest and detention order should have been executed immediately upon its issue on the 6th to be without merit.

The order was signed and issued by the first defendant on the 6th in Kuala Lumpur. It reached A.S.P. Wong in Seremban through the proper police channels on the 9th. It had three different places as the addresses of the plaintiff, two in Seremban and one in Mantin. After receiving the order, A.S.P. Wong took about two days to execute it. The Court finds that the execution of the order was done with all convenient speed after its issuance. The order had to reach A.S.P. Wong through the proper police channels after which he had to locate the plaintiff in order to execute it. It is untenable to contend that a police officer to whom such order is directed must execute it immediately or face having an order which is not valid on his hands. This would result in the absurd situation of the police officer having to revert to the Minister under the Act for a fresh order after each occasion of his failure to execute it immediately. A person who is being sought under such an order may evade arrest or abscond, and the police officer as the executing authority cannot in those circumstances be held at fault. However, even if this contention of the plaintiff as to immediate execution is entertained, and being mindful of the fact that there is no evidence that A.S.P. Wong encountered any difficulty in locating the plaintiff, the Court finds that the total time of five days taken from the issuing of the order and its being received and executed upon the plaintiff as being time taken to act with all convenient speed in the circumstances.

Section 40(2)(c) of Act 388 reads:

> (c) where a power is conferred on any person to direct, order or require any act or thing to be done, there shall be deemed to be imposed on any person to whom a direction, order or requisition is given in pursuance of the power a duty to comply therewith.

No time-frame is prescribed under s. 2(i) within which the order is to be executed, and the said s. 40(2)(c) imposes a duty upon the person to whom the direction, order or requisition is given to comply with the same. But immediate compliance therewith is not a duty imposed on such person. It is therefore sufficient compliance with the direction of the first defendant if the order is executed with all convenient speed as provided by s. 54(2) of Act 388. Further, as long as the order remains unexecuted, the person named in the order is at liberty and is in no way prejudiced by any delay in executing it. He cannot therefore claim that the order becomes null and void or lapses through such delay. It is only when the order is executed that the person concerned can claim that the action taken is prejudicial to him or is to his detriment. There is always the prospect of the order being cancelled or revoked owing to changed circumstances prior to its execution.

The arguments advanced on the plaintiffs behalf that he was not informed of the grounds of his arrest "as soon as may be' within the meaning of Article 5(3) of the Constitution and that he was placed under restriction without an enquiry being held before the period of appeal had expired are considered together for convenience in the light of the facts as found by the Court.

One area of disagreement or divergence between the parties in relation to the facts was the claim that the plaintiff was forced to sign a number of forms at the contingent police headquarters Seremban after his arrest without any knowledge of their contents. Also, it was sought to imply from the sequence of events as narrated in the affidavit of the plaintiffs wife that this took place on the 12th, and not on the 11th as claimed by the defendants. In para. 9 of her affidavit the plaintiffs wife averred that (after his arrest) the plaintiff was immediately brought to and detained at the contingent police headquarters Seremban until the following day, that is the 12th. In para. 10 she deponed that at the said headquarters the plaintiff was forced to sign the forms in question. Their contents were not explained to him and neither did he understand the contents. She continued in para. 11 to state that in the

evening of the 12th the plaintiff was taken to the Pudu Prison and detained until the 24th when he was again asked to sign a number of forms without their contents being explained to him. He was only informed that he was to be restricted to Bagan Serai town.

The Court is unable to accept this version of the facts adduced on behalf of the plaintiff. Apart from the affidavit of A.S.P. Wong, there is uncontroverted documentary evidence, as acknowledged by the plaintiff on the reverse sides of the order under s. 2(i) and the grounds of arrest, that both documents were served on him and their contents were read and interpreted to him in Mandarin by A.S.P. Wong at 10.15 a.m. on the 11th. The framing of paras. 9, 10 and 11 of the affidavit of the plaintiffs wife in the manner in which it was done was an attempt to make the Court conclude that the explaining of the contents of the order and the communication of the grounds of arrest did not take place, and if they did take place, they took place on the day following the arrest, that is, on the 12th and not on the 11th. This may then have meant that the plaintiff was not informed of the grounds of arrest "as soon as may be" within the meaning of Article 5(3) of the Constitution.

The Court also concludes from the letter dated the 11th addressed to the Secretary-General of the Home Ministry and signed by the plaintiff, exhibited as "WWP4" to the affidavit of A.S.P. Wong, that the grounds of arrest including the provision for appeal in Exhibit "WWP2" must have been communicated and explained to the plaintiff on the 11th itself. Otherwise he would not have appealed on the same day to be restricted instead to Semenyih or Bentong in para. 3 of Exhibit "WWP4". No mention is made in the affidavit of the plaintiffs wife to para. 3 of Exhibit "WWP4" to deny the details of facts in that paragraph or to claim that they were concocted. The Court therefore finds that the facts in relation to the execution of the order and explanation of the contents thereof and the communication of the grounds of arrest took place as averred by A.S.P. Wong and supported by the documents exhibited to his affidavit, and not as claimed in the bare assertions of the plaintiffs wife (see ss. 91 and 92 of the Evidence Act 1950).

In these circumstances was the time-lapse of one and a quarter hours between the arrest of the plaintiff at 9.00 a.m. on 11 and the communicating of the grounds thereof to him at 10.15 a.m. fatal so as not to satisfy the requirement of Article 5(3) of the Constitution that the plaintiff be informed of the grounds "as soon as may be" after his arrest and thereby render his deprivation of liberty upon arrest and consequential detention not in accordance with law within the meaning of Article 5(1) of the Constitution?

Aminah's case (*supra*) which was cited in support by learned Counsel for the plaintiff is in fact an authority that fully answers his argument on the purported delay in informing the plaintiff of the grounds of his arrest. In *Aminah,* one A.S.P. Gill was the officer who made the arrest and one of the complaints there was that the detainee had not been "informed as soon as may be of the grounds of his arrest", resulting in non-compliance with Article 5(3) of the Constitution. In para. 4 of his affidavit A.S.P. Gill had specifically denied having given the detainee or anyone else the grounds for his arrest. However, Wan Sulaiman J (as he then was) held that as in the supporting affidavit the applicant had deposed that when she saw the detainee a few hours after his arrest he had been fully informed by the police and knew the reasons for his arrest, this satisfied the requirement of Article 5(3). To quote from pp. 92 to 93 of the report:

> Be that as it may, it would appear that some hours after the arrest, applicant saw the detainee who was not only aware that he was being detained under the Restricted Residence Enactment, but also added that the police had told him further (what) the grounds for his detention were ...

As was held in the Indian case of *Tarapade v. State of West Bengal* [1959] SCR 212, the words "as soon as may be" appearing in Article 22(1) of the Indian Constitution [and Article 5(3) of ours] means as nearly as is reasonable in the circumstances of the particular case. The applicant cannot be heard to deny what she had deposed to in her affidavit, and though what A.S.P. Gill told the detainee may not be sufficient grounds, **what he had been told by some other member of the police force, a few hours later would satisfy the requirement of Article 5(3)**

(Emphasis added)

It was contended on behalf of the plaintiff that he should have been informed of the grounds immediately upon his arrest at 9.00 a.m. in Mantin, and that even so informing him one and a quarter hours later was not sufficient compliance with Article 5(3). With respect, the Court is unable to agree. The proper test to be applied here is whether the communicating of the grounds one and a quarter hours after arrest was as nearly as is reasonable in the particular circumstances of this case. The Court finds that it was reasonably so. Taking into consideration the time that would have been taken by A.S.P. Wong to lodge the report of the arrest of the plaintiff and to travel back to Seremban from Mantin, it was not unreasonable for him to have informed the plaintiff of the grounds of his arrest at 10.15 a.m. by serving the grounds in written form on him and explaining the same to him. The Court therefore finds that there was sufficient compliance with the first limb of Article 5(3) which stipulates that where a person is arrested he shall be informed as soon as may be of the grounds of his arrest.

In so far as the second limb of Article 5(3) is concerned (being allowed to consult and be defended by a legal practitioner of his choice), the plaintiff was in police custody for about one day only during which time the requirements of law and the formalities in connection with his arrest were carried out. The affidavit of the plaintiffs wife is merely to the effect that throughout the plaintiff's detention in police custody they were told not to seek legal advice or else it will be the worse for them. This is an allegation *in vacuo* with nothing to support it. At any rate there is nothing in the affidavit to suggest that the plaintiff sought to exercise his right to consult a legal practitioner of his choice but was denied such right, in which case the exercise of such right would have been subject to the limitation or restriction laid down in *Ooi Ah Phua* (*supra*). However, as no relief is sought in respect of this complaint, the Court does not have to rule on it.

On the complaint by the plaintiff that although he was informed of the grounds of arrest that he could appeal to the first defendant within fourteen days after receiving them on the 11th but despite that the restriction order was issued on the 24th, that is, before the expiry of the fourteen days, which thereby denied him the opportunity of an enquiry, it is relevant to note that in para. 2 of Exhibit "WWP4" to the affidavit of A.S.P. Wong, the plaintiff admitted the charge against him. The words "tidak mengaku" (do not admit) were deleted in para. 2. In para. 3 the plaintiff stated that he admitted (the charge) but wished to make an appeal in respect of the area of restriction for reasons which he specified. He applied to be restricted to Semenyih or Bentong as he had two uncles (named) who were engaged in business in the two places and he was hopeful he could be permitted to join either of them to make a living.

Exhibit "WWP4" is a standard letter in cyclostyled form. Paragraph 2 provides for the arrested person to admit or deny the charges against him by deletion of the appropriate words. If he admits the charges but wishes to appeal as to the area of restriction, then para. 3 would have to be filled in, which was done in the case of the plaintiff. The use of para. 4 would

only arise if the person arrested does not admit the charge and asks for an enquiry to be held. The reasons for asking for the enquiry are then to be stated in the space provided. Since the plaintiff did not ask for an enquiry and had in fact admitted the charge against him, the space in para. 4 was left blank with only a dash inserted.

In para. 8(i) of his affidavit, the first defendant stated *inter alia* that he was satisfied that it was not necessary to hold an enquiry under s. 2(ii). In the circumstances obtaining there was no reason for the first defendant to do so as the plaintiff himself did not want one. Having elected not to ask for an enquiry, the plaintiff is now precluded from complaining that one was not held. At any rate the law does not make it mandatory for an enquiry to be held. As Abdul Hamid CJ (Malaya) (as he then was) said, in reference to the Act which was then the Restricted Residence Enactment 1933, in *Cheow Siong Chin's* case (*supra*) at p. 434 of the report:

> In our judgment, an enquiry by the Deputy Minister before he makes an order under s. 2(ii) of the Enactment is optional and for the purpose only of satisfying himself that there are reasonable grounds for believing that the respondent should have his residence restricted. The respondent is not entitled as of right to any enquiry before an order under s. 2(ii) of the Enactment is issued against him.

As the provision relating to the holding of an enquiry under s. 2(ii) is optional only, the first defendant was not required by law to wait for the expiry of the fourteen-day period of appeal specified in the grounds of arrest, more so in view of the fact that A.S.P. Wong had explained to the plaintiff that he could ask for an enquiry and he had said he did not wish to have one, having admitted the charge against him as borne out by Exhibit "WWP4".

The plaintiff also complained of harassment and his being arrested previously without reason. However, by his own admission he was released unconditionally after such arrest and the question of whether the previous arrest was unlawful had become academic by the time these proceedings were instituted. As Hashim Yeop A. Sani CJ (Malaya) said in *Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors. v. Karpal Singh s/o Ram Singh* [1992] 1 CLJ (Rep) 212 at p. 215 of the report:

> As regards the first preliminary objection it is our view that the matter had indeed by the time the originating summons came before the learned Judge become academic. There was no living issue before the learned Judge. There was no longer any lawful recipient of any benefit of any declaration sought in the originating summons. Cases cited by the learned Judge (*Sun Life Assurance Co. of Canada v. Jervis* [1944] AC 112, *Loknath Padhan v. Birendra Kumar* [1974] *AIR* SC 505 and *Mohamed Noor bin Othman and Ors. v. Haji Mohamed Ismail bin Haji Ibrahim and Ors.* [1988] 1 CLJ (Rep) 224) constitute ample authorities for the Court not to act in vain. The respondent had by then no real interest in the declarations. It will be a complete waste of judicial time if the Court were to deal with the merits of the application in the originating summons solely to determine the question of costs.

On the basis of *Karpal Singh's* case (*supra*), the Court finds that the plaintiff has no real interest in seeking declarations as to his arrest previously and detention following that arrest from 24 December 1989 for a total period of twenty-three days, as he was released thereafter. The Court therefore refuses the declarations sought in respect of such arrest and detention.

There was also an attempt at imputing bad faith or *mala fide* to the defendants. However, the order of the first defendant under s. 2(i) and the grounds of arrest, both of which were exhibited to his affidavit and the affidavit itself, show that the first defendant acted in the exercise of his powers under s. 2(i) and that the arrest of the plaintiff and his detention at contingent police headquarters Seremban were made pursuant to the exercise of a valid legal

power. Once the first defendant declared that he was satisfied of the charge against the plaintiff to require him to reside in the Bandaran Bagan Serai area so as to issue an order under s. 2(i), the onus lay upon the plaintiff to show that such power had been exercised *mala fide*. The plaintiffs wife in the last paragraph of her affidavit merely made bare assertions of the defendants acting *mala fide* and no affidavit was filed in reply to that of the first defendant. This clearly did not discharge the onus placed on the plaintiff to show *mala fide* exercise of power: see *Aminah* (*supra*).

In the event, the claim of the plaintiff for the various declarations in these proceedings is dismissed with costs. The plaintiff shall pay to the defendants such costs as may be taxed by a proper officer of this Court on a party and party basis.

Also found at [1992] 4 CLJ 2273